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# Quid Novi

VOL. V NO. 9 McGILL UNIVERSITY FACULTY OF LAW November 7, 1984
FACULTE DE DROIT UNIVERSITE McGILL 7 novembre, 1984



## QUEBEC BAR SCHOOL - PROPOSED MODIFICATIONS?

By Mitchell Marcus

September 1985 has been scheduled as the target date for the introduction of a new bar education program in Québec, which will entail major modifications to the present system. The ramifications, as will be discussed in this article, will be of tremendous magnitude.

Before addressing the proposed modifications, the nature of the current scheme, as well as the underlying forces which have motivated the proposed changes must be fully appreciated.

For many years a power struggle has been waged between the Government of Québec and Le Barreau du Québec regarding the control and content of the professional education of future lawyers in the province. In 1979, the battle came to a head when "L'Office des professions du gouvernement du Québec" issued an "avis" recommending that l'Ecole de la Formation Professionnelle du Barreau du Québec be abolished, that bar training be given to the universities, and that a fourth year be added to the three-year civil law programme. This fourth year would be exclusively concerned with teaching the "nuts and bolts" of the law. Further, it was proposed that the power to administer the program be vested in l'Office des professions.

The net effect of this "avis" was that le Barreau du Québec would be denied participation in the evaluation of future lawyers who would ultimately be called to join their organization upon the completion of this program. Instead, the Government of Québec, through the vehicle of L'Office des professions would be given that power.

In 1982, the McGill Law Students Association and those of other Québec law schools submitted responses to this "avis." McGill

**Cont'd on p. 5**

## CONSTITUTION QUEBECOISE

L'Honorable Jacques-Yvan Morin, ancien ministre du gouvernement du Québec et professeur de droit à l'Université de Montréal est venu faire un tour sur notre côté de la montagne le 29 octobre en tant que premier invité de l'année du McGill Law Journal. M. Morin nous a présenté un exposé fort intéressant intitulé "Une constitution pour le Québec?". Avec sa perspicacité habituelle, M. Morin a structuré ses propos en quatre grandes lignes.

Il a d'abord souligné que plusieurs "Etats-membres" de fédérations à travers le monde possèdent déjà eux-mêmes des constitutions formelles. Il invoqua l'exemple des cantons suisses, des Etats australiens et étasuniens et même (mon Dieu!) de la Colombie-Britannique. Peut-être M. Morin a-t-il voulu rassurer son auditoire, dès le début de la présentation, en soutenant que prôner une constitution québecoise renouvelée ne sous-entendait pas implicitement la résurrection du Rassemblement pour l'indépendance nationale.

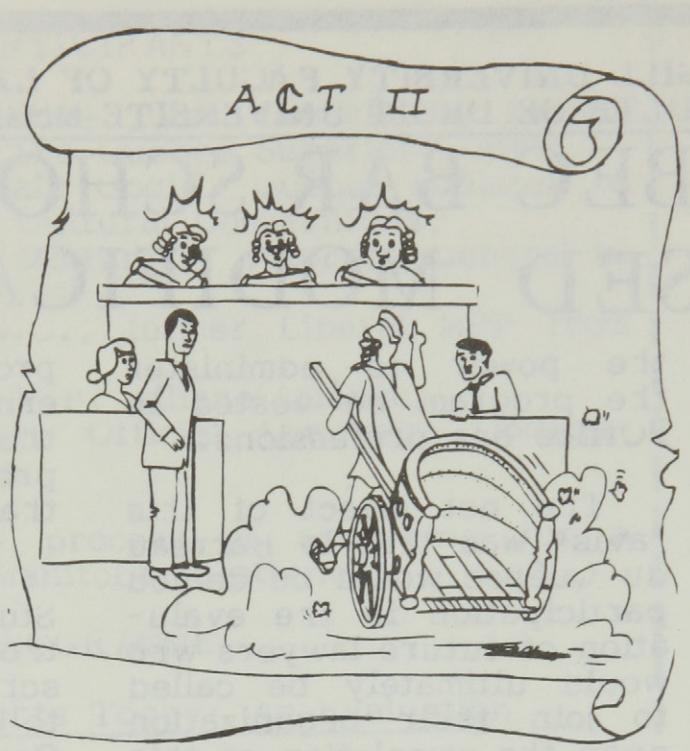
Dans un deuxième temps, M. Morin a rappelé que le Québec possède déjà sa propre constitution malgré le fait que celle-ci se trouve éparpillée "aux quatre coins de la bibliothèque". Il souligna que cette constitution est composée des lois constitutionnelles britanniques adoptées entre 1867 et 1982 qui traitent du Canada et du Québec, des lois fédérales et provinciales ayant une vocation constitutionnelle de certains arrêts des tribunaux, etc.

Cont'd on p. 8

# The Crépeau Legacy: The Elevation of Civil Law to the Status of Divinity

**by Tony Abruzzese**
**Act II**

Narrator: Having had the privilege of witnessing the training of a Civilian under Prof. Crépeau, one must ask: what does a client gain when he secures the services of a Civilian lawyer solemnized by Prof. Crépeau? Simply this...




Scene 1.01.002.001

Stage Directions: Curtain opens. We are now in a court room. Three judges are sitting at the bench, and facing them, plaintiff and defendant in their respective places. Whereas plaintiff's lawyer is ready to address the court, the disciple, representing defendant, has yet to show up. His absence causes confusion and concern.

Chief Justice: (wondering out loud) Where in bloody hell is counsel for defendant? (furious) The proceedings should have begun two hours ago.

Plaintiff: (sarcastic) Your honour, no one else but my husband would hire an incompetent lawyer. (pointing at husband) Does this mean I can't divorce that scumbag today?

Defendant: (in reply) I'll be damned it I have to spend one more minute married to you...

Plaintiff: But I am already damned. I've been damned for the last 15 years, Harold...

Chief Justice: (intervenes while counsel consoles plaintiff) Order! Order!

Stage Directions: Soon thereafter, disciple appears and makes grand entrance. A sudden silence falls upon the court room. All eyes are riveted upon disciple, who is dressed in Roman attire, fitted with brush-type helmet and carrying a Crépeau Code.

Disciple: (panting) I'm sorry your Lordship, my chariot broke down on the Metropolitan. Like they say, better late than never. "Natura non facit saltus."

Chief Justice: (loud) But who is this... JOKER? (to disciple) Are you counsel for defendant?

Disciple: Affirmative, your lordship. Not only that, I am cum sum laude baccalarium civilium...

Defendant's Counsel: (intervening) I object your Lordship. The counsel's conduct and dress should be reprimanded. I submit respectfully and without prejudice to the foregoing (sic) that the rule "nemo auditur stupidus" should apply at once.

Disciple: I counter-object, your Lordship. My learned friend's statement should have read "nemo aduitur peculiarem testum nello fullum creditur puerum quae necessito" (Justinian Book IV, Chapter 3, Part 2, Clause 2, sub-paragraph 6, linea 3...)

Chief Justice: Order! Order! This is a COMMON LAW COURT! I shall not tolerate any Roman impurities. You're out of order, counsel for defendant!

Disiciple: No you're out of order! This whole court is out of order! Out of the natural order of expression which was exclusively vested in myself by the right honourable P.A. Crépeau, inspired by the Institutes of Justinian and the smell of Pothier's library. "Dura lex, sed lex. Abusus non tollit usum..."

Chief Justice: (turning to fellow judge) Quick, get some help. This is urgent.

Fellow Judge: (acknowledging request, speaks into intercom) Code 9! Code 9!

Stage Directions: Just as this is announced, 2 ambulance orderlies arrive, bringing a straitjacket. The sound of a siren can be heard in the background. The orderlies then creep behind the disciple and get him into straitjacket, as he continues to recit latin maxims. Finally realizing what is going on, disciple becomes furious. Only his voice can be heard now.

Disciple: :You can pay for this, PAGANS! I shall have ;you whipped and fed to the lions. "E tu, Brute!" "Magister dixit: Lex est quod notamus!!"

Cont'd on p. 3

# SEARCH FOR TRUTH

**by Sandra Stephenson**

When a lawyer abdicates his Responsibility to Judge, he becomes a professional bickerer. Professional bickerers are people whose skills in picking fights, discerning violated rights in every occurrence and generally being dissatisfied, have been honed to a fine edge. These skills, in my humble opinion, are not an asset to any lawyer except the one who is prepared to argue any case in order to fatten his pocketbook.

They are an Obstacle to Justice.

Justice should represent the balance between two honest tendencies in society (note that the adversarial system reduces any problem to a duality rather than a plurality. In case anyone is under the illusion that democracy is pluralistic, that is another essay). In order for justice to represent this balance, it should be the outcome of a decision based on two points of view, which use past decisions and principles to illustrate their well-foundedness (bien-fondé).

The present predominant practice is not to present two points of view at all, but to filter two points of view (the clients') based on self-interest through two think-tanks (the lawyers) which are also motivated by self-interest. The judge is then expected to make sense of it all.

This practice is perpetuated at Our Law School by the tradition of Moots. Mooting, the two adversaries do not present to the Judge two honest tendencies in society, but two double self-interests. Getting credit for Moots is the same as getting paid for a caseload (and the pitiful remuneration in Moots only sharpens the ability of future lawyers to measure requisite effort against remuneration.)

Instead the effort should be a reflection of the degree of the lawyer's belief in the rightness of the side he is pleading. A lawyer should be able to say No to a cause he doesn't believe in at first sight, and especially if he still doesn't believe in it at second sight or third.

There are many arguments against this -- what about the little guy who has all the evidence against him?; Lawyers must not be narrow-minded, but should represent society's highest tolerance level, etc. These arguments are based on the fear of propagating forever and unquestioned the present status quo.

Because both sides rarely reflect on honest belief (witness all the cases which are decided on solely procedural grounds), the status quo is in fact much more likely to be perpetuated unreasonably.

A real conflict between real beliefs is what makes good law, interesting reading for law students, and the only valid basis for litigation. Lawyers should be encouraged to have opinions, not to suspend them. They should also realize that reason and belief are not mutually exclusive. It would be better for Justice if everyone knew where lawyers' beliefs really lie.

The Moral for our Law School: Mooters should have a choice of Moot problems.

Cont'd from p. 2

**Curtain Closes.**

Narrator: Having witnessed this tragic scene, one may wonder what the moral of the story is. The fact is, and this cannot be over-emphasized, there is no moral when one is dealing with law. There is not even morality. We can only speculate on human fate, and we may thus wonder what has become of the authoritative Prof. Crépeau and his committed disciple.

Fear not! Me Crépeau is no longer a professor, having become disgusted at the disrespect shown to the latin language and Roman law. He has preferred to join the ranks of papacy, where he can freely promulgate the latin tradition. As for our faithful disciple -- he will never again be the same. They say he has fallen victim to the system -- but as faithful as he is, he has followed his master's footsteps, this time peddling latin dictionaries in the corridors of the Vatican.

**Lights Dim. The End.**

# POETRY

Fleeing days
warmed by rays
of Indian summer
flower
in the park.

The empty wading pool
shimmers adrift
in a fresco
of autumn colour

Time becalmed in reverie
fuses
sea, sand, sun,
boundaries
dim.

Equinox,
summer's memory
closes the days
'til winter paints
dawn light.

Quid Novi is published weekly by students at the Faculty of Law of McGill University, 3644 Peel St., Montreal H3A 1W9. Production is made possible by support of the Dean's office, the Law Students' Association, and by direct funding from the students. Opinions expressed are those of the author only. Contributions are published at the discretion of the editor and must indicate author or origin.

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Quid Novi est une publication hebdomadaire assurée par les étudiants de la faculté de droit de l'université McGill, 3644 rue Peel Montréal, H3A 1W9. La publication est rendue possible grâce à l'appui du bureau du doyen, de l'Association des étudiants en droit ainsi que par le financement individuel des étudiants. Les opinions exprimées sont propre à l'auteur. Toute contribution n'est publiée qu'à la discrétion du comité de rédaction et doit indiquer l'auteur ou son origine.

# LETTERS

# BOOTING MOOTING

**An Open Letter to the Dean**

Dear Dean Macdonald,

We would like to express our concern with the mooting programme and, in particular, the way in which Mooting II was organized and conducted this year. The problem, as we see it, is threefold.

Firstly, there were serious inadequacies with some of the problems distributed this year. Many were distinctly one-sided resulting in one team having an excellent case and the opposing team finding it difficult to make any argument at all, let alone one conducive to "good mooting". In addition, some problems had minor errors that could have been avoided through more careful drafting.

These inadequacies were epitomized by the inexcusable state of Problem #2 which was not only inadequate but unworkable in the form in which it was submitted. Only after considerable re-writing by a faculty member was it seen fit to return the problem to those working on it. That this could have been allowed to happen in a faculty priding itself on its academic integrity is not only disturbing but incomprehensible.

Secondly, we should mention the lack of participation in judging by many faculty members. The guidelines of the Moot Court Board stipulate that a professor shall sit on every bench; such was not always the case this year. Could this be a sign that the faculty does not see this as a valid academic exercise? If mooting is so important that this faculty conducts two such exercises whereas most other faculties conduct only one, why is it so difficult for the Moot Court Board to secure faculty participation?

Thirdly, the Moot Court Board exhibited a general lack of administrative organization. Three examples serve to illustrate this point: (i) although it should have been clear far in advance, the Board failed to recognize the conflict involved in assigning problems during the Jewish holidays; (ii) even with the delay necessitated by this short-sightedness, the Board was seen haphazardly recruiting judges at the last minute. Rather than have the schedule formulated far in advance, the Board chose to patch it together even after the factums had been submitted. Thus, many of us saw Board members pleading with faculty and students in the hallways in order to complete their schedule on time; (iii) after the Problem #2 fiasco, the Board, for some reason, failed to reschedule the pleadings with respect to groups who had this problem. This resulted in some groups being asked to plead on the first Monday evening, only three days after completing their factums. It does not bode well for the professional appearance of the Moot Court Board to be seen conducting its business in such an embarassing fashion.

We cannot help thinking

Cont'd on p. 7

# BAR SCHOOL

Cont'd from p. 1.

submitted a two-fold recommendation to the effect that the present bar training program should be maintained (this, in effect, rejecting the "avis"). However, they went on to say that if changes were to be made to the program, there was no objection to the courses being given back to the universities, but that ultimate control over course content should be retained by l'Ecole de Formation Professionnelle du Barreau du Québec.

The other universities recommended that Bar School be abolished. (Note: This was presumably done on the assumption that bar courses were a mere regurgitation of courses they had already been taught during law school -- a problem which we at McGill have never been forced to contend with.)

It should be noted at this point that the "avis" is not law, and may never become law.

Nonetheless, l'Ecole de Formation Professionnelle du Barreau du Québec has approached the recommendations postulated in the "avis" seriously and with caution, inevitably concerned that implementation of the "avis" would mean an erosion of their sacred monopolization over bar education, and a fortiori over the number of lawyers that would enter the profession.

In this regard, le Barreau established a committee (hereinafter referred to as "le Comité") to formulate some set of acceptable response to the "avis", and achieve the following objectives:

1) Control over bar training, and ultimately over entrance into the profession would be retained by le Barreau; and

2) A restructured program would be introduced which would appease the Government and the majority of Quebec Law schools who so vehemently opposed the present bar training program.

Pursuant to their mandate, on January 27, 1984, le Comité adopted in principle the following general objective:

"Que le nouveau programme académique (curriculum) de la formation professionnelle soit élaboré sur la base de l'enseignement des habilités pertinentes à l'accomplissement des tâches ou à l'exercice des fonctions de la profession d'avocat (telles que entrevue, rédaction, négociation, recherche, preuve et représentation devant les tribunaux, gestion de la pratique professionnelle, etc.), par opposition à la base d'un programme construit à partir de matières de droit positif" (emphasis added).

In order to accomplish this objective, "le Comité" has suggested that the course be divided into six main "skill-areas" believed essential to advocacy:

1) D'établir une relation de consultation et de conseil;
2) d'effectuer de la recherche factuelle et juridique;
3) de rédiger des écrits d'ordre juridique;
4) d'agir à titre de négociateur;
5) de maîtriser l'art de la représentation;
6) de gérer sa pratique professionnelle; et
7) d'appliquer à sa pratique des règles de l'éthique professionnelle (objectif poursuivi concurremment à chacun des autres objectifs généraux).

Le Comité is at present in the process of defining the exact content of these six main "skill-areas", and preparing course materials. September 1985 has been scheduled as the target date for the introduction of this program as a pilot project, with the intention that it will thereafter be integrated as the principal training program.

However, a number of important questions remain unanswered by "Le Comité":

1) If the theme of the new bar program is to be the imparting of practical skills through a process called "l'apprentissage actif" (learning by doing), how will students be evaluated?

2) What will be the fate of the stagiaire programme? Was it not the intention of this program to give students an opportunity to acquire the very same skills that are now being prposed to be taught during bar school? Does this implicitly suggest that the stagiaire program is not achieving its purpose, and should be redefined or abolished?

3) What about the effects of "le Comité's" proposal on university curriculum? An underlying assumption of the new program is that students have been thoroughly introduced to the theoretical, as well as the mechanical aspects of the law during their academic training.

It is submitted in response that, with the exception of a few law schools in Québec, a vast

Cont'd on p. 8

# JOE STAR 1208 JOE STAR

You could say it was right out of a Macbethean scene; dragon's breath covering the battlefield, Civilian gladiators doing battle with enemy Spartans. Yes, it was a battle of Biblical proportions -- Law I vs. the Interdicts. But who was to hold the jock-tateous title. On this cool evening, Joe Star would only know. From his early morning Beaver Lake runs, to the mid-morning snacks of potato pancakes, to finally his placid battle glare, only J. Star believed.

The battle was fought through swamp and ice. The tide was to turn early. Civilian II receptor Bruno "Two-way" Duguay was to pierce the armour of the Interdict secondary with patent catches and slash runs. Third year civilian import from Milan (3 years out of the Justinian Centra League) Storm Dionne was a Roman lion making numerous outstanding receptions. But what propelled such an awesome attack? In five words; Joe Star and Prairie Dog Garson. Both were gladiators of epic proportions not seen since the days of David. The two hogs rambled for large gains surprising a napping Spartan Blitz. Early in the first half, J.S. was to score the go ahead touché.

No doubt, the story on this calendar day had to be the civilian defence. Iron curtains they were all. The Interdict offence was raided for three interceptions, one by R. Quonman (the Albertan Free Agent), Bo Katz (the cratty face slidder), and P.P. Pamel (the Signalman). Along with the aerial defence, the front line guards held off the Interdict offence to minimal gains. The men of the trenches deserving of honourable mention included N. Eschleman, Little Peter, Set. Monster Hamilian, James P. Dean, and the Vain.

Under difficult conditions, the Civilian Corps prevailed. The Spartan effort was game, but on this evening a little lame.

The Civilians were seen carrying their offensive and defense star, Joe Star away aloft mighty shoulders. They were heard chanting victory songs in the catacomb known to all warriors as the T-House till the early dawn, punctuated with name of Victory: Joe Star 1208, Joe Star 1208...

**M. Monte Ciarallo**
**BCL III**

# Sauce for the Goose

Rick Goossen's article ["Grey Doorknobs, Brass Handles"] is very witty. Perhaps a touch too witty, and as a result self-revealing. Three summers of being "immersed in the grease and slime of the factory" may have soiled his hands, but if his musings are a yardstick, they have taught him little about the substance of his co-workers.

For ten years before coming to McGill I worked as a welder. During that time I experienced the friendship and trust of hundreds of workers. Without a doubt I met my fair share of buffoons and bigots -- a group Mr. Goossen was quick to recognize. Yet I would venture to add, respectfully, that their number was not any greater than those we may find in any law faculty -- perhaps less!

What I find offensive (all proportions guarded) in Mr. Goossen's witty article is the inference that workers, because of their lack of higher education, are little more than buffoons, concerned with their problems of "drunken driving, statutory rape, the KKK or the 25¢ Pop machine". More often than not I worked with men and women who were concerned about Québec's constitutional right to veto legal restrictions on the right to strike, or the degrading effect of pornography.

I suggest that it would be to the future lawyer's advantage to keep in mind that all our BCL's and LLB's give us is the opportunity to practice a specific skill, not a licence to belittle others who have different skills. One works with the civil code under his arms, the other a wrench -- this fact alone does not permit us to identify the more intelligent.

**Asher Neudorfer**

### The Most Quotable Quote of the Century

"Mandate is very much like love. While it may be there it's better that one express the sentiment."

**Prof. Sarna**
**Business Associations**

### Quotable Quote

"We are learning that reasonable doubt does not mean reasonable doubt."

Prof. Grey
Evidence

# MOOTING

**Cont'd from p. 4**

that these problems must be attributed in the end to the faculty itself. Why is it that the faculty prescribes the mooting programme for students and then seemingly abdicates responsibility for its functioning? There are guidelines in place, designed for the effective operation of the mooting programme. Yet, these were obviously ignored. Their lack of enforcement was the result of inadequate supervision which was ultimately the source of many, if not all, of this year's problems.

It would not be fair to criticize without providing some possible solutions. Thus, we propose the following:

1) There should be strict enforcement of existing guidelines regarding procedural deadlines to be met by members of the Board. As with any other academic exercise, blatant incompetence or failure to meet deadlines should result in certain penalties, namely the withholding of credits for that course. In addition, with all due respect, it should be part of every professor's duty to sit on the Moot Court bench. This would ensure fair treatment not only to all students concerned but also to those dedicated faculty members who at present must sit on two or three benches the week of pleadings.

2) There should be an increased involvement on the part of faculty in the selection of the members of the Moot Court Board to guarantee their high quality, reliability, and competence.

3) Finally, there should be mandatory supervision by faculty members of the problem-writing. We propose that faculty members be assigned to topics within their particular field of specialization to work closely with Board members in drafting the problems. This would ensure better problems in general and would prevent the recurrence of the sort of incompetence which was so evident in the drafting of Problem #2. While faculty member--student consultation does occur at present on an ad hoc basis, this should be a required, not a recommended, procedure.

We feel that if these proposals were followed, there would be a higher academic and professional standard of mooting than has been the case in the recent past. This would lead to a greater participation on the part of both students and faculty in this valuable program.

The Moot Court Board has a responsibility to all members of the first and second year classes. It is not one that should be taken lightly since a great deal of time, effort and dedication is invested in the mooting process. Lately, this responsibility has not been exercised in an exemplary fashion. We hope that this letter will result in serious discussion of these recent problems, in the interest not only of future students but of the reputation of the McGill Faculty of Law itself.

**Sincerely yours,**
**Members of the LLB II class**
**Endorsed in full by the BCL II class.**

# *Bookstore Buys*

The McGill law students have, for the past six years, operated a satellite branch of the McGill Bookstore. The branch is run by a volunteer student committee and it supplies all of the textbooks to the McGill law community. Operating in this manner means that prices can be kept to a bare minimum; instead of selling at the publisher's list price a small percentage is added on to the cost price of the texts.

Here is a price comparison of books that a first year student in the LL.B. program could be expected to buy:

Blacks's Law Dictionary
List Price -- $29.95
Our Price -- $23.10

Canadian Constitution Acts
List Price -- $5.25
Our Price -- $3.75

Swan and Reiter/Contracts
List Price -- $44.95
Our Price -- $39.60

Waddams/Contracts
List Price -- $65.00
Our Price -- $35.75

Flemming/Torts
List Price -- $29.60
Our Price -- $26.00

Wright and Linden/Cnd. Tort Law
List Price -- $39.95
Our Price -- $35.15

Mendes Da Costa/Property Law
List Price -- $48.50
Our Price -- $42.70

Dawson/Oracles of the Law
List Price -- $26.00
Our Price -- $22.00

Stuart and Deslisle/Learning Canadian Crim. Law
List Price -- $39.50
Our Price -- $34.60

**Cont'd on p. 8**

# BAR SCHOOL

**Cont'd from p. 5**

number of students are not well acquainted with the "nuts and bolts" aspects of procedural and substantive law. The cause of this lacunae is that certain law faculties in Québec function under a premise that is in complete contradiction to "Le Comité's" assumptions. Those law faculties believe that valuable time need not be spent studying the mechanics of the rules as they are adequately covered during the bar training courses.

This state of affairs leads one to ask some fundamental questions: "Should the legal curriculum presently being offered by law faculties undergo modification in conjunction and contemporaneously with the changes being proposed by "La Comité"? Will these two bodies not operate at cross-purposes, and the end results be lawyers poorly trained in the mechanics of our legal system?"

The Law Students Association, through its "Bar Review Committee", is presently investigating these issues, as well as others raised by the reform proposals. This Committee intends to submit a position paper to "La Comité de Formation Professionnelle Du Barreau Du Québec" in response to their suggested reform.

The members of the LSA committee are: Richard Janda, Jill Hugessen, Marie-France Leduc, Bettina Karpel, Yves Simard, and Mitchell Marcus.

Members of the student body are strongly encouraged to get in touch with any (or all) of the above-named to provide views or queries regarding "La Comité's" recommendations.

**Criminal Law Group Presents**

Me. Julio Peris

Speaking on

"The Practicalities of Practice in Criminal Law"

Thursday, November 8th, 12:00 noon in the Common Room.

# une constitution

Cont'd from p. 1.

Troisièmement, le professeur Morin a suggéré que le Québec aurait intérêt à adopter une constitution nouvelle qui rassemblerait les données essentielles de sa constitution actuelle, tout en y incorporant des éléments nouveaux. On pourrait trouver notamment une définition du "statut du pouvoir", une Charte des droits et libertés individuelles ainsi que la reconnaissance de certains droits collectifs et socio-économiques. Notre invité a précisé que, selon lui, il serait préférable que le contenue exact d'une telle constitution soit le résultat d'un processus consultatif relativement long. Enfin, le projet de loi constitutionnnel pourrait être présenté à la population par le biais de référendum avant d'être adopté par l'Assemblée Nationale.

Finalement, M. Morin a ajouté qu'il serait possible d'envisager une formule d'amendement dont la procédure s'avérerait plus formelle ou, si on veut, plus "exigeante" que la simple adoption d'une loi par la législature. Ainsi, un amendement de la constitution se réaliserait, à titre d'exemple, par la voie référendaire ou bien par l'assentiment d'une majorité renforcée des députés à Québec. Le Professeur Morin a bien reconnu que des formules d'amendement semblables revenaient à dire "en termes constitutionnels" que la législature peut effectivement se lier elle-même. Il souligna d'ailleurs qu'il existe déjà une jurisprudence à cet effet (notamment en Australie) qui, croit-il, pourrait s'appliquer ici.

Remarquons bien que M. Morin a cherché à démontrer qu'une nouvelle constitution québécoise telle qu'il l'a envisagée pourrait être adoptée dans le cadre du système constitutionnel canadien tel qu'il existe à l'heure actuelle. Pour ceux qui aimeraient en savoir davantage, M. Morin traitera prochainement de ce même thème dans le McGill Law Journal, et, cette fois, de façon exhaustive.

**Chris Atchison**
**BCL I**

# bookstore

**Cont'd from p. 7**

Magnet/Constitutional Law
List Price -- $44.95
Our Price -- $39.60

Totals:
List Price -- $373.55
Our Price -- $302.40

Total Savings in One Semester -- $71.15

The bookstore now occupies part of the basement of the new law faculty building at 3647 Peel Street (entrance via the side door). The operating hours are from noon until 13h30, Mondays and Wednesdays until mid-November.